

**ALASKA STATE LEGISLATURE  
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 23, 2021  
8:03 a.m.

**DRAFT**

**MEMBERS PRESENT**

Representative Zack Fields, Co-Chair  
Representative Ivy Spohnholz, Co-Chair  
Representative Calvin Schrage  
Representative Liz Snyder  
Representative David Nelson  
Representative James Kaufman  
Representative Ken McCarty

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 159

"An Act establishing the Consumer Data Privacy Act; establishing data broker registration requirements; making a violation of the Consumer Data Privacy Act an unfair or deceptive trade practice; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 146

"An Act relating to disclosure of information regarding employee compensation by employers, employees, and applicants for employment; establishing the fund for protection of compensation disclosure rights; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 125

"An Act relating to private sector and state employment preferences for active service members, veterans, and spouses and dependent children of active service members and veterans; relating to employment preferences for surviving spouses of deceased service members and veterans; and relating to employment preferences for disabled veterans and former prisoners of war."

- MOVED CSHB 125(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 75

"An Act relating to employer contributions to the Public Employees' Retirement System of Alaska; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 159

SHORT TITLE: CONSUMER DATA PRIVACY ACT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/31/21	(H)	READ THE FIRST TIME - REFERRALS
03/31/21	(H)	L&C, JUD, FIN
04/23/21	(H)	L&C AT 8:00 AM GRUENBERG 120

BILL: HB 146

SHORT TITLE: DISCLOSURE OF WAGE INFORMATION

SPONSOR(s): SNYDER

03/24/21	(H)	READ THE FIRST TIME - REFERRALS
03/24/21	(H)	L&C, JUD, FIN
04/05/21	(H)	L&C AT 3:15 PM BARNES 124
04/05/21	(H)	<Bill Hearing Canceled>
04/09/21	(H)	L&C AT 8:00 AM GRUENBERG 120
04/09/21	(H)	<Bill Hearing Canceled>
04/16/21	(H)	JUD REFERRAL REMOVED
04/16/21	(H)	BILL REPRINTED
04/23/21	(H)	L&C AT 8:00 AM GRUENBERG 120

BILL: HB 125

SHORT TITLE: MILITARY AND FAMILY EMPLOYMENT PREFERENCE

SPONSOR(s): NELSON

03/05/21	(H)	READ THE FIRST TIME - REFERRALS
03/05/21	(H)	MLV, L&C
03/16/21	(H)	MLV AT 1:00 PM GRUENBERG 120
03/16/21	(H)	Heard & Held
03/16/21	(H)	MINUTE(MLV)
03/18/21	(H)	MLV AT 1:00 PM GRUENBERG 120
03/18/21	(H)	Moved HB 125 Out of Committee
03/18/21	(H)	MINUTE(MLV)
03/20/21	(H)	MLV RPT 6DP

03/20/21	(H)	DP: CLAMAN, TARR, SHAW, NELSON, RAUSCHER, TUCK
04/16/21	(H)	L&C AT 8:00 AM GRUENBERG 120
04/16/21	(H)	Heard & Held
04/16/21	(H)	MINUTE (L&C)
04/23/21	(H)	L&C AT 8:00 AM GRUENBERG 120

BILL: HB 75

SHORT TITLE: EMPLOYER CONTRIBUTIONS TO PERS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	L&C, FIN
04/19/21	(H)	L&C AT 3:15 PM BARNES 124
04/19/21	(H)	Heard & Held
04/19/21	(H)	MINUTE (L&C)
04/23/21	(H)	L&C AT 8:00 AM GRUENBERG 120

#### **WITNESS REGISTER**

CORI MILLS, Deputy Attorney General  
Civil Division  
Office of the Attorney General  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Introduced HB 159 on behalf of the House Rules Standing Committee, sponsor, at the request of the governor.

JOHN HALEY, Assistant Attorney General  
Special Litigation and Consumer Protection  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for HB 159 on behalf of the House Rules Standing Committee, sponsor, at the request of the governor.

ALLIANA SALANGUIT, Staff  
Representative Liz Snyder  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for HB 146 on behalf of Representative Snyder, prime sponsor.

HILARY MORGAN, Chief Executive Officer  
Resourceful Results, LLC

Washington, D.C.

**POSITION STATEMENT:** Testified in support on HB 146.

JOE DUNHAM, Chief Investigator  
Wage and Hour Administration  
Division of Labor Standards and Safety  
Department of Labor and Workforce Development  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 146.

DAN WAYNE, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 146.

NILS ANDREASSEN, Executive Director  
Alaska Municipal League  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 75.

#### **ACTION NARRATIVE**

[8:03:16 AM](#)

**CO-CHAIR ZACK FIELDS** called the House Labor and Commerce Standing Committee meeting to order at 8:03 a.m. Representatives Schrage, Fields, Spohnholz, Nelson, and Snyder were present at the call to order. Representatives McCarty and Kaufman arrived as the meeting was in progress.

^#hb159

#### **HB 159-CONSUMER DATA PRIVACY ACT**

[8:04:02 AM](#)

CO-CHAIR FIELDS announced that the first order of business would be HOUSE BILL NO. 159, "An Act establishing the Consumer Data Privacy Act; establishing data broker registration requirements; making a violation of the Consumer Data Privacy Act an unfair or deceptive trade practice; and providing for an effective date."

[8:04:23 AM](#)

CORI MILLS, Deputy Attorney General, Civil Division, Office of the Attorney General, Department of Law, introduced HB 159 on behalf of the House Rules Standing Committee, sponsor, at the request of the governor. She said the intent of the proposed legislation is to protect Alaskans' constitutionally protected right to privacy, pointing out that Alaskans are concerned that companies such as Facebook and Amazon are collecting and using information in ways that negatively impact privacy. She also noted that one of the administration's core initiatives is to make Alaska "open for business," and she stated that HB 159 is a good "starting place" to address the juxtaposition of privacy concerns and economic priorities. The central purpose of HB 159, she said, is to provide Alaskans with the ability to know what information companies are collecting and to allow control over how the information is used. She expressed that the administration understands that the proposed legislation needs "substantial work" and said that it will be important to hear from the business community regarding how the proposed legislation could affect individual businesses.

[8:08:35 AM](#)

JOHN HALEY, Assistant Attorney General, Special Litigation and Consumer Protection, Civil Division (Anchorage), Department of Law, presented the sectional analysis for HB 159 on behalf of the House Rules Standing Committee, sponsor, at the request of the governor, which read as follows [original punctuation provided]:

**Section 1.** Adds a new duty to the list of responsibilities of the commissioner of the Department of Commerce, Community, and Economic Development to establish and maintain a data broker registry.

**Section 2.** Establishes the Consumer Data Privacy Act as AS 45.49. Since this section of the bill lays out a new chapter, the following information is organized by the articles established in the new chapter and their respective statutory sections.

**Article 1. Collection, sale, or disclosure of consumer personal information.**

**Sec. 45.49.010. Notice of collection, sale, or disclosure of personal information.**

This section requires that a business notify a consumer before collecting personal information. "Business" is defined in the definition section of this Act as including only businesses that either have annual gross revenues of \$25 million or more, buy or disclose the personal information of 100,000 or more households, or that engage in the sale of personal information. Notifications under this section must include the categories of information collected, the purpose for collecting that personal information, and the right of a consumer to opt-out, established below. This information, and other detailed information relating to the personal information collected, must be maintained and updated by a business as part of the business' online privacy policy and consumer privacy rights, or on the business' website if the business does not maintain an online privacy policy. Businesses subject to this section are charged with training customer service staff in answering questions about consumer rights.

8:11:36 AM

CO-CHAIR SPOHNHOLZ asked how many businesses would meet the definition of "business" under the proposed legislation.

MR. HALEY responded that he doesn't know, and that part of the difficulty of the proposed legislation is that the Department of Commerce, Community, and Economic Development (DCCED) doesn't necessarily have information on companies other than those that are required to file reports.

CO-CHAIR SPOHNHOLZ said that it will be important to know that information in the future.

8:12:33 AM

CO-CHAIR FIELDS commented that the legislation would be meaningless without enforcement, and that companies won't willingly disclose their financial information.

8:13:05 AM

MR. HALEY resumed his sectional analysis, which read as follows [original punctuation provided]:

**Sec. 45.49.015. Personal information; notification upon receipt.**

This section requires that a person who receives personal information that was originally collected by a business, as defined by this chapter, for a business or commercial purpose notify the business of the person's possession and provide their contact information. The person must also deidentify the personal information or maintain it in such a way that it could be deleted or disclosed upon request. If this person discloses the personal information to another person for business or commercial purposes, they must also inform the business that initially collected the personal information of the disclosure within 10 days and have a contract that requires the subsequent recipient to comply with a deletion request under this chapter. Finally, the business that initially collected the personal information must maintain records of each person to receive the collected personal information.

[8:13:56 AM](#)

CO-CHAIR FIELDS asked how to avoid capturing mid-sized Alaska-based businesses that collect and keep a piece of data as simple as a consumer's phone number.

[8:14:32 AM](#)

REPRESENTATIVE MCCARTY asked whether a company's categorical definition of "business" would be public knowledge.

MR. HALEY replied that the proposed legislation doesn't require businesses to disclose its annual revenues to the Department of Law.

[8:16:09 AM](#)

CO-CHAIR FIELDS commented that Florida just passed a data privacy bill including an income threshold of \$50 million. He asked why the administration arrived at the income threshold of \$25 million.

MR. HALEY responded that the number was an initial attempt by the administration to strike an appropriate balance. He said

that the income threshold related to the sale of personal information is unique to HB 159.

[8:17:39 AM](#)

MR. HALEY commented that Sec. 45.49.015 would create a chain of tracking requirements so that individuals may learn who has their personal information. He then continued his presentation of the sectional analysis, which read as follows [original punctuation provided]:

**Sec. 45.49.020. Right to request disclosure of collected personal information.**

Under this section, a consumer has the right to request that a business that collected the person's personal information within the last five years disclose the type of information collected, the sources from which the information was collected, and the business or commercial purpose for collecting the information. A business is required to respond to a verified consumer request in accordance with AS 45.49.060, discussed below.

**Sec. 45.49.030. Right to request deletion of personal information.**

If a consumer's personal information is collected by a business, the consumer may request that the business delete any information collected by the business from the consumer within the five years preceding the date for the request. The business is required to delete the information identified in the request from that business' records and must direct all persons who received the information to delete it, as well. Recipients of the collected information must provide the originating business with a written statement that the information was deleted within 45 days of the request. If this statement is not provided, the business must immediately notify the attorney general and consumer.

Recipients may be able to retain the information if it is required to complete a transaction or contract, provide a requested good or service within an ongoing relationship with the consumer, fulfill the terms of a warranty or recall, identify and repair



errors that impair certain products or services, exercise a legal right, comply with a legal obligation or court order, engage in certain types of public research studies, or enable specifically internal uses of the information aligned with the consumer's expectations.

8:20:32 AM

CO-CHAIR FIELDS commented that there exist laws in Europe regarding public dissemination of slanderous content, so-called "right to be forgotten" laws. He said there is also a process to remove such information from the Internet. He asked whether HB 159 would affect only the business that collected information rather than also affecting a business that makes the information available for public consumption.

8:22:27 AM

MS. MILLS responded that the proposed legislation is not intended to mirror "right to be forgotten" laws but is instead directed at the business that initially collected the information and subsequently disclosed it to a second business. He pointed out that HB 159 isn't intended to address slanderous Internet posts.

CO-CHAIR FIELDS discussed the idea of changing the proposed legislation to mirror "right to be forgotten" legislation and mentioned considerations of bullying and harassment.

8:22:40 AM

MR. HALEY resumed his presentation of the sectional analysis, which read as follows [original punctuation provided]:

**Sec. 45.49.040. Right to request disclosure of personal information sold or disclosed for a business or commercial purpose.**

This section gives a consumer the right to request disclosures from a business that sold or disclosed the consumer's personal information for a business or commercial purpose within the last five years. The consumer may request disclosure of the persons who received the personal information for a business or commercial purpose, the categories of information, and the business or commercial purpose

for disclosure. A business is required to respond to a verified consumer request in accordance with AS 45.49.060, discussed below.

**Sec. 45.49.050. Right to opt out or for a minor to opt in.**

This section provides that a consumer may request that a business not sell the consumer's personal information or specific categories of personal information. A business may not contact a consumer asking the consumer to renounce this request for a year after the request is made. This section also requires that a business limit the use or disclosure of a consumer's precise geolocation data to that which is necessary to provide goods or services the customer reasonably expects or goods or services the business reasonably expects the customer will request. A business may use precise geolocation data for other purposes if the consumer gives consent in writing.

[8:25:09 AM](#)

CO-CHAIR FIELDS pointed out that one of the criticisms of the European Union's General Data Protection Regulation (GDPR) is the ubiquitous use of pop-ups that void its protections.

[8:25:40 AM](#)

REPRESENTATIVE SNYDER noted that the proposed legislation includes the option to "opt out" instead of "opt in" with regards to participating in data sharing. She asked what the argument is for starting with the "opt out" approach.

MR. HALEY replied that choosing an "opt in" policy seems to be a stronger privacy provision, but that he doesn't know which approach, as a matter of policy, would be most appropriate.

[8:28:07 AM](#)

CO-CHAIR FIELDS asked whether there exist legal models that differentiate between advertising and application functions.

MR. HALEY responded that HB 159 would, to a degree, address the difference. He said that deciding whether an advertisement could be of reasonable, expected use would be relevant.

8:29:46 AM

MR. HALEY presented the last paragraph of the sectional analysis pertaining to Sec. 45.49.050, which read as follows [original punctuation provided]:

This section also requires that a business not disclose personal information or precise geolocation data if the business has actual knowledge, or recklessly disregards the likelihood, that the consumer is under 18 years of age. A parent or legal guardian may authorize the sale or disclosure of personal information of a consumer who is at least 13, but under 18, years of age.

8:30:09 AM

REPRESENTATIVE NELSON asked for information on where the line would be drawn regarding recklessly disregarding the likelihood that a consumer is under 18 years of age.

MR. HALEY replied that the statutory language wouldn't provide specific information regarding reckless disregard, but that what constitutes reckless disregard could depend on future adoption of technology in a manner similar to using a children's YouTube channel to advertise cigarettes to minors.

REPRESENTATIVE NELSON commented that a teenager ordering pizza by phone or website would be giving their data to a business, and he asked whether such a scenario would fall under the provision in Sec. 45.49.50.

MR. HALEY reminded the committee that the proposed legislation would deal with the sale and disclosure of data, not with the simple collection of data.

REPRESENTATIVE NELSON said he was looking for clarification regarding whether the proposed legislation could affect a business that doesn't know whether an individual is a minor.

MR. HALEY briefly described a possible intensive analysis for determining whether such a case would violate the statute under HB 159.

8:34:30 AM

MS. MILLS added that standards such as negligence and recklessly disregarding the truth would be used in the analysis of whether a company engaged in wrongdoing under HB 159.

[8:35:42 AM](#)

CO-CHAIR FIELDS commented on the value of the in-depth discussion of the sectional analysis.

[8:35:54 AM](#)

MR. HALEY returned to his presentation of the sectional analysis of HB 159, which read as follows [original punctuation provided]:

**Sec. 45.49.060. Disclosure or deletion request; process.**

This section lays out the process for a business to respond to a verified consumer request. A business is required to designate at least two methods to submit a request, at minimum through a toll-free telephone number and electronic mail address. Information contained in a request may only be used to identify the personal information and comply with the request. If the request is for disclosure of information under AS 45.49.020 or 45.49.040, the business must provide the information in a readable, electronic format or by mail, if requested. For all requests made under AS 45.49.020 - 45.49.050, a business must follow the outlined process to determine if the request is verified, identify applicable information, disclose and deliver the information, and, if there is a request to delete information, provide confirmation of compliance. A business has 45 days to respond under this section, but may take an additional 45 days when reasonably necessary if the business notifies the consumer.

This section prohibits a person from charging a fee for performing an obligation under this chapter. However, if a consumer's requests are manifestly unfounded or excessive, a business may charge a reasonable fee or refuse to act on a request. If either of these actions are taken, the business must notify the consumer of the decision within 45 days of receipt of the request with a complete explanation of

the business' reason for finding the request or requests excessive or unfounded. If the consumer has made two verified requests within the previous 365 days, the business is not required to respond to a request to delete or disclose information.

This section provides certain exceptions, as well. A business that does not sell or disclose information is not required to retain information collected in a single, one-time transaction. If a business does not maintain data in a manner that would be considered "personal information" under this chapter, the business does not need to reidentify or link data. Finally, if the business cannot verify the consumer request, it is not required to disclose or delete information under this section.

**Sec. 45.49.070. Third-party disclosure of personal information.**

Under this section, a third-party is prohibited from disclosing personal information if it was originally collected in violation of AS 45.49.010 or 45.49.050. If the third-party reasonably concludes after an inquiry that the information was not obtained in violation of these sections, they may not be held liable for a violation. A third-party must have written confirmation from the original collector that the information was legally collected before disclosing the information for a business or commercial purpose.

[8:41:18 AM](#)

REPRESENTATIVE MCCARTY compared selling data to throwing a bag of chicken feathers into the wind, saying that no one would ever be able to collect them all. He then asked, "The third party is not responsible for, but they may be very much involved in, the distribution of these chicken feathers all over. What are we doing to the person that's been violated ... any type of integrity that's been compromised?"

MR. HALEY responded that enforcement would be a challenge because it would be difficult to know where every piece of information goes. He said that the proposed legislation wouldn't create one "highly regulated" industry in which the government has tracking powers; instead, he said, the proposed

legislation would be much broader in scope so it wouldn't be necessary to know exactly who has violated the law. Information would be provided by whistleblowers, tips, and news media.

REPRESENTATIVE MCCARTY commented that his name was misspelled in the phone book, and a third party used what was found in the phone book. He asked whether a third party would be held accountable for errors for the purpose of helping consumers.

MR. HALEY responded that the intent of the proposed legislation isn't to correct misinformation.

8:45:32 AM

CO-CHAIR FIELDS commented about the right to be forgotten and asked Mr. Haley whether a private right of action is included in the proposed legislation.

MR. HALEY replied that it is.

CO-CHAIR FIELDS asked whether it includes a private right of action for enforcement of the provisions.

MR. HALEY replied that enforcement of the provisions in the proposed legislation would be through the Office of the Attorney General. He said that violations of the provisions would be violations of the Unfair Trade Practices Act, as well as a number of other acts within the larger act. He said that the state has powers to issue subpoenas and force testimony, while the Office of the Attorney General may file action seeking injunctions and fines of up to \$25,000 per violation.

CO-CHAIR FIELDS mentioned funding an enforcement section within the Department of Law.

8:47:54 AM

MR. HALEY pointed out that the fiscal note for HB 159 requests one attorney and one litigation assistant for enforcement and the drafting of regulations. He then resumed his presentation with the sectional analysis, which read as follows [original punctuation provided]:

**Sec. 45.49.080. Service provider obligations.**

This section prohibits service providers from taking certain actions with respect to personal

information. First, information received from a business may only be retained, used, or disclosed for the specific services contracted. Second, information from one business may not be combined with that from other sources unless provided for in regulation. Finally, information may not be disclosed unless there is written consent from the business or the recipient and service provider sign a written contract prohibiting the recipient from engaging in conduct prohibited to the service provider. A person who receives personal information from a service provider cannot disclose that personal information to any other person.

45.49.080 service provider obligations

**Sec. 45.49.090. Exemptions.**

In addition to the restrictions inherent in this chapter's definitions of terms such as "business," "person," and "consumer," there are a number of exceptions. Those exceptions are as follows:

- protected health information collected by a covered entity or business associate governed by the Health Insurance Portability and Accountability Act (HIPAA);
- covered entities under HIPAA that maintain patient information or protected health information;
- information collected as part of certain clinical trials;
- vehicle or ownership information shared between a motor vehicle dealer and manufacturer, or in anticipation of a repair covered by warranty or recall;
- collection or sales that occur wholly outside of the state;
- certain activities subject to or information collected or disclosed under federal laws or regulations;
- a business may be exempted from collecting information until January 1, 2024, if o the information is related to a person's job application; service as an employee; business ownership; service as a licensed dentist, physician, or psychologist; or work as a contractor; and o applies if the information is used solely in the context for which it was collected, is emergency contact information used for that purpose, or is retained to administer benefits;

- information contained in communications between the business and consumer if the consumer is a person acting on behalf of a business or agency and the transaction is within the context of the business relationship;
- compliance would violate an evidentiary privilege;
- personal information is provided as part of a privileged communication;
- the right or obligation would adversely affect another consumer's rights or infringe on certain noncommercial activity; Some of the above categories may still provide for a right to file a claim under AS 45.49.120, duty to maintain reasonable security measures, discussed below. A person may also disclose information, notwithstanding this chapter, in order to comply with federal, state, or local law; comply with a legal inquiry, investigation, or subpoena; cooperate with law enforcement; exercise or defend legal claims; or as relates to deidentified or aggregated information. Additionally, if component parts of a transaction are separated in order to avoid compliance with this chapter, they may be considered together to determine compliance.

[8:53:37 AM](#)

REPRESENTATIVE KAUFMAN asked whether there exists a diagram showing the proposed legislation's various decision points and different actions resulting from those decisions, so he could better visualize how the different elements would work together.

MR. HALEY replied that no one has made such a diagram.

REPRESENTATIVE KAUFMAN suggested that it would be interesting to see possible gaps and decision points in the provisions.

[8:55:07 AM](#)

CO-CHAIR FIELDS announced that HB 159 was held over.

^#hb146

#### **HB 146-DISCLOSURE OF WAGE INFORMATION**

[8:55:41 AM](#)

CO-CHAIR FIELDS announced that the next order of business would be HOUSE BILL NO. 146, "An Act relating to disclosure of



information regarding employee compensation by employers, employees, and applicants for employment; establishing the fund for protection of compensation disclosure rights; and providing for an effective date."

8:56:31 AM

The committee took an at-ease from 8:56 a.m. to 8:57 a.m.

8:57:05 AM

CO-CHAIR SPOHNHOLZ moved to adopt the proposed committee substitute (CS) for HB 146, Version 32-LS0513\B, Wayne, 4/19/21 ("Version B"), as the working document. There being no objection, Version B was before the committee.

8:57:29 AM

REPRESENTATIVE SNYDER, as prime sponsor, introduced HB 146. She shared that the proposed legislation seeks to support fair hiring practices for the protection of all Alaskan workers while ensuring that employers are not placed at unfair risk or disadvantage. She said that the first component is "pay privacy," a provision under which employers would be prohibited from requiring an applicant's salary history during the application process. She said this component would allow the employer and applicant to focus on qualifications, which would help to ensure that salary history doesn't unduly affect an individual's economic potential. She said that 27 states, and many cities, have a similar law, and the U.S. House of Representatives recently passed the Paycheck Fairness Act; if that Act passes at the federal level, HB 146 would ensure parity between the state and federal law.

REPRESENTATIVE SNYDER said the second component of HB 146 could be called "pay transparency," a provision under which applicants and/or employees must be allowed to discuss their salaries if they choose to do so. She stated that the National Labor Relations Act protects this type of discussion, as does decades of case law. The third component, she said, is called "pay posting." Job announcements must include a range of pay as well as other compensation details; by doing so, she said, applicants won't misdirect resources toward job openings with compensation that doesn't meet their needs. This component would also benefit employers, she said, by helping them avoid spending valuable time interviewing applicants who ultimately wouldn't accept the offer due to pay. She described sitting on hiring

committees and spending many hours and thousands of dollars recruiting and interviewing potential employees, only to have the job offer turned down because the applicant wasn't aware of the salary range prior to the offer.

REPRESENTATIVE SNYDER said that HB 146 would disallow retaliation against an applicant or employee who chooses to not share salary history or who chooses to share current salary information. A small fine for violations would be implemented under HB 146, she said, with the revenues directed to the undesignated general fund (UGF); the fine could be avoided if an employer changes their practices to operate within the parameters of the proposed legislation. She stressed that HB 146 would not require an employer to offer any specific pay range or compensation package, nor would it disallow an employer to amend compensation after an interview has been conducted. "The range is a starting point; it gives a potential applicant a general idea of where the conversations may begin," she said. She pointed out that the provisions would not disallow an employer from asking what an applicant's salary expectations would be, and that an applicant may still choose to share salary history.

[9:05:50 AM](#)

REPRESENTATIVE SNYDER shared that there is growing evidence showing that the issues which would be addressed by HB 146 are pervasive and persistent. She said that on the issue of pay privacy, nationally representative studies from 2012, 2017, and 2019 show that up to 47 percent of respondents said they have been asked about past wages. A study from 2011, she said, showed that half of all workers reported that discussion of wage and salary information was either discouraged or prohibited by their employers.

[9:08:03 AM](#)

ALLIANA SALANGUIT, Staff, Representative Liz Snyder, Alaska State Legislature, presented the sectional analysis for HB 146 on behalf of Representative Snyder, prime sponsor, which read as follows [original punctuation provided]:

**Sec. 1:** Amends AS 22.10.020. *Jurisdiction of the Superior Court* by establishing that the Superior Court has jurisdiction over all causes of action that arise under the remaining law sections in this bill. An

aggrieved employer or employee may apply to the Superior Court for relief.

**Sec. 2:** Amends AS 23.10 *Employment Practices and Working Conditions* by adding **Article 9. Disclosure of Employee Compensation** and the following sections:

• **Sec. 23.10.700. Disclosure of Discussion Wages:**

(a) Requires job postings to include a salary or salary range. (b) Allows applicants and employees to discuss current wage, prohibits employers from asking applicants about their salary history with another employer

(c) Clarifies that nothing in this section obligates an employee or applicant to disclose their compensation, prohibits an employee or applicant from voluntarily disclosing, or prohibits an employer from using information that is voluntarily disclosed under this subsection when determining the salary of an employee or applicant.

• **Sec. 23.10.705 Posting Summary Required** requires an employer to post information summarizing the bill's provisions.

• **Sec. 23.10.710 Retaliation Prohibited** prohibits an employer from retaliating against an employee for exercising a right under the bill.

• **Sec. 23.10.715 Damages for Retaliation** allows an employee to file a civil claim against an employer if the employer retaliates.

• **Sec. 23.10.720 Statute of Limitations** gives an employee no more than 3 years after a violation to file a civil claim.

• **Sec. 23.10.725 Penalty** creates a fine between \$100-\$2000 for violations and directs the Department of Labor and Workforce Development Commissioner to determine the amount. An employer may, at the discretion of the Commissioner, reduce the fine or correct the violation by conducting an audit.

• **Sec. 23.10.735 Regulations** adds language directing the Department of Labor and Workforce Development

Commissioner to implement and interpret this bill and adopt regulations accordingly.

- **Sec. 23.10.790 Definitions** exempts independent contractors from the definition of "employee." Defines an "employer" as the state, the University of Alaska, the Alaska Railroad Corporation, a political subdivision of the state, and a person who employs one or more employees.

**Sec. 3:** Adds conforming language AS 22.10.020. Jurisdiction of the Superior Court

**Sec. 4:** Provides for an effective date of July 1, 2021.

[9:10:44 AM](#)

REPRESENTATIVE SNYDER introduced her invited testifier.

[9:11:14 AM](#)

HILARY MORGAN, Chief Executive Officer, Resourceful Results, LLC, testified in support of HB 146, which she said would be helpful in leveling the playing field for women and people of color in finding and attaining fair wage employment. She said that in her former position as CEO of Young Women's Christian Association (YWCA) of Alaska she worked on an initiative to help close the gender pay gap and with the Department of Labor and Workforce Development (DLWD) studying wages in Alaska. The data showed that for full time, year-round workers, women made less than men in every geographic location and every market sector, and that the wage gap persisted regardless of industry, education level, and occupation. She explained that asking for a person's salary history can perpetuate discriminatory practices instead of evaluating an applicant on merit. Regarding pay posting, she said, research has shown a double standard in salary negotiation between men and women, and between white people and people of color; men who negotiate salary are seen as "strong" and "closers," while women who negotiate are seen as "bossy" and not being a "team player." When people of color negotiate salary, she said, they're most often seen as either "overstepping" or "ungrateful." She pointed out that anyone who has ever interviewed for a job knows that asking for salary range during the interview has negative connotations. She said that managers know what the salary range is on every job; budgets can't be done without having the

information before advertising the opening. In her experience as a CEO, she said, listing the salary range in the job posting streamlined the application and interview process and attracted applicants comfortable with the range; while it didn't inhibit her from offering an applicant a higher wage, it did limit her ability to "lowball" an applicant. She expressed her belief that HB 146 would mitigate all of the issues she described.

9:15:41 AM

REPRESENTATIVE NELSON asked whether the intention of HB 146 is to have an individual reporting to the DLWD that a job posting doesn't include salary information.

REPRESENTATIVE SNYDER replied yes. She explained that the proposed legislation would give DLWD the authority to decide how best to address such complaints.

REPRESENTATIVE NELSON asked whether DLWD would be able to handle the workload.

REPRESENTATIVE SNYDER referred to the fiscal note and said that DLWD currently has 13 investigators who work on prevailing and minimum wage issues.

REPRESENTATIVE NELSON opined that it's difficult to justify a \$300,000 fiscal note for that amount of self-reporting.

REPRESENTATIVE SNYDER shared that the fiscal note amount was surprising and that there were discussions with DLWD about what their process was in arriving at the amount. She pointed out that, since receiving the fiscal note, research has shown that several states with similar or larger populations have enacted similar laws with either no fiscal notes or notes with very small amounts, usually intended for implementation or education.

9:19:10 AM

CO-CHAIR FIELDS commented that there are already staff in place to enforce the provisions and that he doesn't see the need for a fiscal note.

9:19:53 AM

JOE DUNHAM, Chief Investigator, Wage and Hour Administration, Division of Labor Standards and Safety, Department of Labor and Workforce Development, said that the logic behind the fiscal

note is that the underlying message of HB 146 is "equal pay for equal work." He said that if workers were to start discussing their wages there could be many calls coming in to his office. He said that he would like to add three workers to handle the "onslaught" of calls regarding issues of termination, retaliation, or the handling of back wages. He said that he could understand the existence of a zero fiscal note if implementation was a simple issue of putting up a poster, but this proposed legislation would encourage workers to openly discuss their salaries.

[9:21:16 AM](#)

REPRESENTATIVE SNYDER commented that if DLWD foresees an onslaught of complaints in response to HB 146, such an opinion further justifies the need for the proposed legislation.

MR. DUNHAM replied that he could see many moot investigations.

[9:22:12 AM](#)

CO-CHAIR SPOHNHOLZ asked whether the three-year limitation to file a civil claim would apply to all provisions of the bill.

REPRESENTATIVE SNYDER replied that it would.

[9:22:38 AM](#)

REPRESENTATIVE NELSON asked whether HB 146 would be pulled if the federal Paycheck Fairness Act were enacted.

REPRESENTATIVE SNYDER noted the common practice of having laws in state statute that mirror those on the federal level.

[9:23:30 AM](#)

CO-CHAIR SPOHNHOLZ invited Mr. Wayne to discuss the subject of federal versus state statutes.

[9:23:55 AM](#)

DAN WAYNE, Attorney, Legislative Legal Services, Legislative Affairs Agency, said that he doesn't know of a federal law that specifically requires employers to post a salary range or that protects the rights of employees to discuss their salaries.

[9:25:20 AM](#)

REPRESENTATIVE SNYDER clarified that she was referencing the Paycheck Fairness Act, which would be a new federal law addressing pay privacy and prohibiting employers from requiring an applicant's salary history. She pointed out that 27 states already have the law in place, and that the proposed legislation would be intended to complement the federal law.

REPRESENTATIVE NELSON stated that his earlier question was whether there would be any conflict between HB 146 and the legislation proposed at the federal level, should they pass.

[9:26:15 AM](#)

REPRESENTATIVE MCCARTY asked Mr. Dunham how many investigations he conducts on a monthly basis and by how much he would expect the number of investigations to increase as a result of HB 146.

MR. DUNHAM replied that displaying wages on a job posting shouldn't cause any increase in workload in his department, nor does he anticipate an increase in the workload resulting from the provision about employers being prohibited from asking about previous wages. He said encouraging employees to discuss wages could cause problems. He said, "If I hire a mechanic at \$26 an hour and then I hire this next one at \$30 an hour, I'm going to tell him, 'Don't talk about your wages because it's going to cause a problem.'" He said that he could see the lower-paid mechanic wanting more money and possibly contacting DLWD about the issue of equal pay for equal work.

[9:29:18 AM](#)

REPRESENTATIVE SNYDER pointed out that Mr. Dunham just highlighted how important the education roll-out is, so that individual and employers fully understand the parameters of the proposed legislation. She noted the importance of distinguishing between policy preferences and cost estimates of implementation and monitoring.

[9:30:33 AM](#)

REPRESENTATIVE KAUFMAN referred to page 2, lines 21 through 24, which read as follows:

- (c) Nothing in this section
- (1) creates an obligation for an employee or applicant for employment 23 to disclose information about the

employee or applicant's compensation or the 24  
compensation of another;

REPRESENTATIVE KAUFMAN commented that some people might not want others to know their salary range. He then asked whether the proposed legislation includes protections for employers who want to compensate high performers.

REPRESENTATIVE SNYDER explained that the "pay privacy" provision is sometimes called a "salary history ban" and is connected in a positive way to "pay posting." She said that there exists evidence that when employers are prohibited from requiring salary histories from their applicants, they naturally gravitate toward posting the salary range on the job posting, eliminating the need to ask for an applicant's pay history because the applicant is prepared for the salary range. She also stated that nothing in the proposed legislation would prohibit an employer from giving a bonus or other reward for good work. She expressed being amenable to changing the language of the proposed legislation to clarify that point.

[9:33:40 AM](#)

CO-CHAIR FIELDS announced that HB 146 was held over.

^#hb125

**HB 125-MILITARY AND FAMILY EMPLOYMENT PREFERENCE**

[9:34:07 AM](#)

CO-CHAIR FIELDS announced that the next order of business would be HOUSE BILL NO. 125, "An Act relating to private sector and state employment preferences for active service members, veterans, and spouses and dependent children of active service members and veterans; relating to employment preferences for surviving spouses of deceased service members and veterans; and relating to employment preferences for disabled veterans and former prisoners of war."

[9:34:40 AM](#)

REPRESENTATIVE SCHRAGE moved to adopt Amendment 1 to HB 125, labeled 32-LS0602\A.1, Wayne, 4/22/21, which read as follows:

Page 1, line 1:

Delete "**private sector and state**"



Page 6, line 27:

Delete "a dependent child or"

[9:34:43 AM](#)

CO-CHAIR FIELDS objected for purposes of discussion.

[9:34:46 AM](#)

REPRESENTATIVE SCHRAGE expressed his support for HB 125 and shared his desire to limit the scope of the bill by removing the hiring preference for dependents in state employment with the exception of dependents of prisoner of war or Gold Star families.

[9:35:56 AM](#)

REPRESENTATIVE NELSON, as prime sponsor of HB 125, shared his support of the intent of the amendment but pointed out that having a job makes it easier for a dependent to become part of a community.

[9:37:07 AM](#)

CO-CHAIR FIELDS withdrew his objection. There being no further objection, Amendment 1 to HB 125 was adopted.

[9:37:22 AM](#)

CO-CHAIR SPOHNHOLZ moved to report HB 125, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 125(L&C) was reported out of the House Labor and Commerce Standing Committee.

^#hb75

**HB 75-EMPLOYER CONTRIBUTIONS TO PERS**

[9:37:45 AM](#)

CO-CHAIR FIELDS announced that the final order of business would be HOUSE BILL NO. 75, "An Act relating to employer contributions to the Public Employees' Retirement System of Alaska; and providing for an effective date."

[9:38:23 AM](#)

NILS ANDREASSEN, Executive Director, Alaska Municipal League, testified in support of HB 75. He noted possible concerns about the proposed legislation's potential impact on the 64 local governments but shared his understanding that local governments would not be negatively impacted. He said the provisions under HB 75 wouldn't apply at the local level because the amount of funding wouldn't be on the same scale. He said that as long as local governments are protected from the rate change of 22 percent, HB 75 would be a positive change for the state.

[9:40:08 AM](#)

CO-CHAIR FIELDS noted that he, along with o-Chair Spohnholz, and the administration, had contacted public employee unions to ensure that the union members were aware that the proposed change would not increase employee contributions.

[9:40:41 AM](#)

CO-CHAIR FIELDS announced that HB 75 was held over.

#

[9:40:51 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 9:41 p.m.